

Both Victim and ‘Perpetrator’: Finding a Voice before Inquiries into Historical Abuse in Out-of-Home Care

[Shurlee Swain](#)

International Journal of Transitional Justice, Volume 12, Issue 3, 1 November 2018, Pages 464–478, <https://doi.org/10.1093/ijtj/ijy015>

In 2014, a research paper commissioned by Australia's Royal Commission into Institutional Responses to Child Sexual Abuse caused outrage amongst survivor groups because of its statement that fellow residents were responsible for the bulk of abuse in out-of-home care.¹ Asked to justify their conclusions the authors retracted the claim, arguing instead that ‘though there is evidence to suggest that child-child sexual abuse in out-of-home care occurs at substantial levels, its prevalence has not yet been established.’² The partial retraction did little to ameliorate distress amongst the survivor groups. Although the paper had been commissioned as part of the Royal Commission's forward looking project, designed to ensure safe environments for children in the future, for survivors its allegation was politically dangerous, recalling too many instances in the past where investigations of institutional abuse had deflected

¹ Frank Golding blog, comment posted 9 December 2015, <http://frankgolding.com/2015/12/> (accessed 3 November 2017)

² Sandra South, Aron Shlonsky, Robyn Mildon, Anastasia Pourliakas, Jessica Falkiner and Adrian Laughlin, *Scoping Review: Evaluations of Out-of-home Care Practice Elements that Aim to Prevent Child Sexual Abuse* (Revised version) (Sydney, 2015), <http://childabuseroyalcommission.gov.au/policy-and-research/our-research/published-research/evaluations-of-out-of-home-care-practice-elements>, (accessed 3 November 2017).

blame onto the victims, arguing that immoral practices prevalent amongst children in care were the cause of most of the harm.³

The Royal Commission is the latest in a series of Australian inquiries into historical institutional abuse, similar to those that have taken place in many Western nations since the late twentieth century. More than forty such inquiries have taken place at both regional and national levels across a range of countries in Western Europe and in former British colonies, most notably Austria, Australia, Belgium, Canada, England, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Northern Ireland, Norway, Scotland, Sweden and Wales.⁴ While the scope, auspice and structure of these inquiries vary, the issues that come before them, the evidence that they access, the conclusions they draw and the recommendations they make

³ Shurlee Swain, *History of Inquiries Reviewing Institutions Providing Care for Children*, (Sydney 2014) 8.

⁴ For a discussion of the spread of such inquiries see Johanna Sköld and Shurlee Swain (eds), *Apologies and the Legacy of Abuse of Children in 'Care': International Perspectives*, (London, 2015). The major predecessor inquiries in Australia were Human Rights and Equal Opportunity Commission (HREOC), *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Sydney, 1997); Australian Senate Community Affairs References Committee (ASCARC), *Lost Innocents: Righting the Record Report on Child Migration* (Canberra, 2001); *Forgotten Australians: A Report on Australians Who Experienced Institutional or out-of-Home Care as Children* (Canberra, 2004); *Commonwealth Contribution to Former Forced Adoption Policies and Practices* (Canberra, 2012).

have been remarkably consistent.⁵ The similarity is noted in the reports of such inquiries which often position themselves in relation to preceding inquiries in other jurisdictions, using earlier reports to validate their own findings and structure their recommendations. The proliferation of such inquiries has given rise to a new area of research both within and beyond the field of transitional justice. While much of this research is local in its emphasis, more recently scholars have begun to develop comparative analyses, an endeavor of which this article is a part.⁶

The submissions and testimonies analyzed in this article come from inquiries that took place in Britain and its former colonies.⁷ The legacy which they shared provides a strong basis for comparison. Their common legal and social systems shaped the type of provision they made for children in need of out-of-home care, which was often outsourced to religious organizations. In turn these religious organizations crossed national boundaries with many Roman Catholic religious orders and some Protestant denominations, for example, being key providers in multiple locations, bringing with them similar disciplinary and management practices. It was the failure of such practices that allowed peer-on-peer abuse to emerge and, in some situations, to thrive.

⁵ Katie Wright, 'Remaking Collective Knowledge: An Analysis of the Complex and Multiple Effects of Inquiries into Historical Institutional Child Abuse,' *Child Abuse and Neglect* 74 (2017): 11.

⁶ See for example: Johanna Sköld, 'The Truth about Abuse? A Comparative Approach to Inquiry Narratives on Historical Institutional Child Abuse,' *History of Education* 45, no. 4 (2016); Kathleen Daly, "Conceptualising Responses to Institutional Abuse of Children", *Current Issues in Criminal Justice* 26, no. 1 (2014)

⁷ For these inquiries the submissions and testimony is publicly available in English which is not the case for the other inquiries in which only the executive summaries of final reports are generally translated.

The Australian Royal Commission follows the practice established in these inquiries and the other truth commissions to which they are related of creating a special status for victim/survivors as a way of giving voice to experiences previously excluded from public narratives in order to produce 'narratives and explanations that unsettle the existing accounts of the past.'⁸ However, the reification of the victim within this new scenario makes it difficult for those who suffered abuse but also engaged in behavior that might be classified as abusive, to find a space to speak. Given that sexual and physical violence were endemic in many institutional settings, there are many care leavers⁹ who identify as victims who fell, willingly or more often unwillingly, into this category. The transitional justice literature has been criticised for failing to address the 'critical dynamics that divide, rather than unite, the victim landscape.'¹⁰ As Chris Healy and Maria Tumarkin have argued, a 'politics of forgetting' prevails amongst those who derive 'both identity and considerable power from their sense of a shared traumatic past.'¹¹ This paper enters into that contested discursive space with the aim of disarming rather than promoting the condemnation which such victims fear. Through an analysis of testimony presented to recent historical abuse inquiries in Australia, Canada, Ireland and the United Kingdom, it identifies the ways in which acknowledgement that victims can also be perpetrators has been inserted into the emerging narratives at both the official and the individual level. It

⁸ Onur Bakiner, 'One Truth among Others? Truth Commissions' Struggle for Truth and Memory,' *Memory Studies* 8 (2015): 346.

⁹ The term care leaver is used in Australia and the United Kingdom to describe adults who spent part of all of their childhood in institutional or foster care.

¹⁰ Tazreeba Sajjad, 'Heavy Hands, Helping Hands, Holding Hands: The Politics of Exclusion in Victims' Networks in Nepal,' *International Journal of Transitional Justice* 10 (2016): 26.

¹¹ Chris Healy and Maria Tumarkin, 'Special Issue: Social Memory and Historical Justice: Introduction,' *Journal of Social History* 44 (2011): 1010.

shows how the small number of victim/perpetrators who do speak seek to maintain their position in the survivor group by constructing their behavior as normative and, at times, heroic. It also argues for the importance of understanding rather than questioning such justifications if the already fragile survivor groups are not to be further weakened as they move the focus of their campaigns from inquiry to reparation.

The concept of the complex victim

The trials that arose in the aftermath of the Holocaust struggled with the problem of how to classify the victim/perpetrator. Orna Ben-Naftali and Yogev Tuval have argued that the new state of Israel constructed an identity which allowed for heroes (who resisted) and victims (who died) but left suspect the vast majority who fitted into neither of these categories.¹² The trials of survivors who had worked for the Nazis within the camps created a space in which testimonies from the 'grey zone' between the two ideals could be heard, but the process proved to be so uncomfortable that the evidence has been 'expunged from the national and legal memory,' which the authors describe as an opportunity lost.¹³ Within the contemporary transitional justice literature the existence of such dual identities is usually highlighted in relation to child soldiers, undoubtedly perpetrators but also recognized as victims.¹⁴ This paper argues that there is a case for survivors of historical institutional abuse to be understood, and understand themselves, in a similar way.

The most effective tool for examining the situation of the victim/perpetrator comes from Erica Bouris who in 2007 advanced the concept of the 'complex victim' as a way of fracturing

¹² Orna Ben-Naftali and Yogev Tuval, 'The Kapo Trials in Israel (1950s–1960s),' *Journal of International Criminal Justice* 4 (2006): 148.

¹³ *Ibid.*, 175.

¹⁴ Erica Bouris, *Complex Political Victims* (Bloomfield, CT, 2007), 87.

'the constellation of simplicity and innocence that dominates the ideal political victim identity.'¹⁵ Writing in the context of a discussion of peace building, she argues that 'the advancement of a victim identity that hinges on a nearly unreachable standard of innocence and purity seems a deeper ethical transgression than recognizing the complexity and nuance of all people, even as they suffer the injustice of political victimization.' The ideal victim, 'passive, innocent and vulnerable' is a powerful discursive construct. However, it is relatively rare in the real world.¹⁶ Applying Bouris's concept of the complex victim to his study of reparation processes, Luke Moffett has argued that attempting to construct a stark dichotomy between victim and perpetrator renders victims as passive and vulnerable and damages the victim-perpetrators who cannot assume this identity.¹⁷ His aim in studying the latter is 'not to mitigate their personal responsibility ... but to understand the personal, social and political contexts in which victimization occurs.'¹⁸ Institutions for children created a very particular context which needs to be understood if the behavior of those confined within them is to be understood.

Bouris recognized that the concept of the complex victim does not fit easily 'into a truth commission where those who have suffered unwarranted harm must assume the totalizing mantle of "victim" in order to participate.'¹⁹ Claimant groups within the transitional justice arena have consistently sought to reinforce the binary, constructing the victim in absolute opposition to

¹⁵ Ibid., 75.

¹⁶ Elizabeth Stanley, 'Responding to State Institutional Violence', *British Journal of Criminology* 55 (2015): 1153.

¹⁷ Luke Moffett, 'Reparations for 'Guilty Victims': Navigating Complex Identities of Victim-Perpetrators in Reparation Mechanisms,' *International Journal of Transitional Justice* 10 (2016): 149.

¹⁸ Ibid., 150.

¹⁹ Bouris, supra n 14 @ 89.

the perpetrator and excluding the latter from any claim to reparations.²⁰ However, where the focus of an inquiry is on historical institutions where abuse was endemic, that dichotomy is harder to preserve. While Anne-Marie McAlinden suggests that in cases of sexual abuse the victim/perpetrator divide is starker than in cases of physical abuse, evidence presented before the various commissions in this study would suggest that just as harsh discipline or violent play could slide into physical abuse, it was not always easy to identify a point at which consensual sexual activity between peers became abusive.²¹ Studies of sexual abuse in contemporary care settings use this reality to identify child-to-child abuse, often referred to as aberrant sexual behavior, as the core problem, as the research presented to the Australian Royal Commission rather unthinkingly reported.²² The use of such supposedly neutral terminology diverts attention from the wider question as to why such behavior is so prevalent in institutional care. If the cause is seen as being located in the 'type' of children coming into the system, the responsibility of the care provider is to devise means of 'managing' such behavior. However, if there is something about out-of-home care that facilitates or even promotes peer abuse, more drastic changes are called for. This question becomes more complex when the behavior being referred to took place in the distant past when perpetrators did not attract such psychological labels but were seen as standing in opposition to prevailing notions of the innocent child.

²⁰ Kieran McEvoy and Kirsten McConnachie, 'Victimology in Transitional Justice: Victimhood, Innocence and Hierarchy,' *European Journal of Criminology* 9 (2012): 531-2.

²¹ Anne-Marie McAlinden, 'Deconstructing Victim and Offender Identities in Discourses on Child Sexual Abuse,' *British Journal of Criminology* 54 (2014): 186.

²² Christine Barter, David Berridge, and Pat Cawson, *Peer Violence in Children's Residential Care* (Gordonsville, VA, 2004): 21. Mike Stein, 'Missing Years of Abuse in Children's Homes,' *Child and Family Social Work* 11 (2006): 16.

The political import of raising this issue should not be underestimated, given its power both in the past and the present to deflect attention from the systemic failures that allow such abuse to occur. In 1900 a New Zealand Marist brother was cleared of multiple charges of indecent assault after 'the principal witness ... contradicted himself, and finally admitted having been guilty himself of similar offences upon his school-fellows.'²³ Throughout the twentieth century, the presence of physical violence, and particularly predatory sexual behavior was not denied but was dismissed as a consequence of bringing 'tainted' children together, rather than as a by-product of the system itself. Institutional managers argued that the best they could do was to mitigate rather than eliminate what they saw as an inevitable evil.²⁴ Evidence presented to the Irish Commission to Inquire into Child Abuse (CICA) illustrates the long term survival of such attitudes amongst child care staff. A priest from the Daingean boys home in central Ireland provided a detailed description of the domination/submission culture that prevailed amongst the residents, ending with the explanation that some of the most dominant boys 'had been quite involved in boy prostitution in the city,' the implication being that his audience would understand that this disqualified them from full victim status.²⁵ The Reverend Mother in charge of a girls' home at Kilkenny in the 1950s adopted a similar stance, explaining the sexual activity amongst the girls in terms of their innate depravity, depicting them as too knowing to be pure, yet ignoring the sexual abuse to which they had been subjected by a male staff member prior to the event.²⁶

²³ 'Stoke Orphanage Scandals,' *Kalgoorlie Western Argus*, 4 December 1900, 37.

²⁴ Rev. W. Wade, 'The Enemies of Childhood. No.3. - Overcrowding (Cont),' *Our Waifs and Strays* VIII (1902): 274-5; Edward Mullighan, *Children in State Care: Commission of Inquiry: Allegations of Sexual Abuse and Death from Criminal Conduct* (Adelaide, 2008): 33.

²⁵ Commission to Inquire into Institutional Abuse (CICA), *Report of the Commission to Inquire into Child Abuse*, vol. 1 (Dublin, 2009): 664.

²⁶ CICA, *Report of the Commission to Inquire into Child Abuse*, vol. II (Dublin, 2009): 506.

Abuse as Embedded and Endemic

Investigations of historical institutional abuse approach the issue of peer abuse with great caution. There is no consensus as to its frequency. Elizabeth Stanley's study of abuse in state care in New Zealand found almost half of the respondents had been sexually assaulted by a fellow resident, a proportion only slightly less than those who claimed they had been assaulted by staff members.²⁷ The Tribunal of Inquiry into Child Abuse in North Wales Department of Health report, by contrast, expressed surprise at how few of the complaints it had been called upon to investigate related to peer abuse, concluding that the frequency they had observed was no 'greater than in other residential establishments in which pubescent boys are segregated.'²⁸ This qualification is important as attempts to estimate the frequency of peer abuse struggle to identify the point at which mutual sexual activity, agreed to be normative, should come, in retrospect to be considered as abusive. The evidence of an anonymous witness before the Northern Ireland Historical Institutional Abuse Inquiry (HIA) captures this dilemma well. Discussing his experiences as a child migrant sent to the notorious Christian Brothers institutions in Western Australia he began by stating 'there was a bit of adolescent sex amongst the boys themselves but it was more mutual masturbation and fiddling' before adding that 'some of the older boys would force themselves on you which was entirely non-consensual sexual abuse.'²⁹ Sex as exploration or mutual comfort is depicted as relatively common, but

²⁷ Stanley, *supra* n 16 @ 1150.

²⁸ Tribunal of Inquiry into Child Abuse in North Wales Department of Health, *Lost in Care, Report of the Tribunal of Inquiry into the Abuse of Children in Care in the Former County Council Areas of Gwynedd and Clwyd since 1974* (London, 2000): 74.

²⁹ Historical Institutional Abuse Inquiry (HIA), *Module 2 Child Migrant Programme Evidence Called and Transcripts* (Belfast, 2014). HIA 301 witness statement,

non-consensual sex is now identified as one of the tools used to enforce the patterns of domination and submission which structured social relations within large institutions. The Canadian Truth and Reconciliation Commission (TRCC) reported that it heard of many instances of such abuse in the Indian residential schools, documenting the patterns of inducement and intimidation which allowed it to thrive.³⁰ The HIA report argues that the sexual and physical abuse was endemic in the large dormitories of older institutions across Northern Ireland, was a 'learnt behavior [that] manifested itself as part of wider bullying' that prevailed in such environments.³¹

In several of the inquiry reports the issue of inter-resident abuse is discussed under the labels of bullying or initiation, identifying a range of practices that institutional authorities ignored, condoned and in some cases actively encouraged.³² These practices could be both sexually and physically abusive. 'Welcoming' rituals administered by older residents, for

https://www.hiainquiry.org/sites/hiainquiry/files/media-files/day_43_am_hia_301_docs_redacted_for_web.pdf (accessed 3 November 2017).

³⁰ Truth and Reconciliation Commission Canada (TRCC), *The Survivors Speak: A Report of the Truth and Reconciliation Commission of Canada* (Winnipeg, 2015): 172.

³¹ Anthony Hart, David Lane, and Geraldine Doherty, *Report of the Historical Institutional Report Inquiry*, vol. 1 (Belfast, 2017): 26-28.

³² ASCARC, *Forgotten Australians*, 129-30; *Lost Innocents*, 76; Family and Community Development Committee Parliament of Victoria, *Betrayal of Trust: Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations*, vol. I (Melbourne, 2013): 131; CICA, *Report of the Commission*, vol. II, 6; TRCC, *Canada's Residential Schools: The Final Report of the Truth and Reconciliation Commission of Canada*, vol. 1 (Montreal, 2015): 454-6; Tom Shaw, *Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950 to 1995* (Edinburgh, 2007): 31-2.

example, were an essential part of establishing and sustaining the institutional hierarchies that staff often relied on to maintain order.³³ A regular feature of the Salvation Army home in Goulburn, New South Wales, was 'the tunnel of love' where younger residents 'had to run between bully boys in a line on each side of you, much like a rugby scrum as they kicked and thumped you.'³⁴ The older boys also introduced newcomers to mutual masturbation which they explained functioned as a form of sex education and as a 'secret game played against [a prudish] management.'³⁵

³³ CICA, *Report of the Commission*, vol. III (Dublin, 2009): 6. Stanley, *supra* n 16 @ 1150; HIA, *Module 3 De La Salle Boys Home at Rubane House, Kircubbin Evidence Called and Transcripts* (Belfast, 2014). HIA 244 witness statement:

<https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M3-D59-HIA-244-called-docs-Rev-RO.pdf> (accessed 4 November 2017); TRCC, *supra* n 30 @ 165. SCARC, *Forgotten Australians* Submission 279:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2004-07/inst_care/submissions/sublist (accessed 4 November 2017); *Betrayal of Trust*, Gwenda Collier submission:

http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Gwenda_Collier.pdf; Wayne Davis submission: available at

http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Wayne_Davis.pdf; Joan Finn submission: available at

http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Joan_Finn.pdf (accessed 4 November 2017).

³⁴ *Forgotten Australians* Submissions, *supra* n 33 @ Submission 248, 282.

³⁵ *Ibid.*, Submission 471, 321.

The use of older residents to 'discipline' younger children created a chain of command in which victims became perpetrators. The practice of setting boys to fight each other as a form of both punishment and entertainment was reported in male-only institutions in Australia, Ireland and Canada with the 'winners' being rewarded for their brutality.³⁶ It was, in the experience of one child migrant, 'a human cockfight' set up by the Christian Brothers 'for their enjoyment.'³⁷ In a variation of this practice, at some other Australian institutions boys were organized into 'dingo packs' to pursue absconders. 'When caught, the pack would bash into their "victim" and drag him back', receiving a reward for their efforts.³⁸

In chronically understaffed institutions older residents had extensive supervisory responsibilities giving them unfettered access to younger children, with survivors reporting that

³⁶ CICA, supra n 33 @ 109. TRCC, supra n 30 @ 157. HIA, supra n 29 @ HIA 346 witness statement: https://www.hiainquiry.org/sites/hiainquiry/files/media-files/hi_346_docs_for_website_redacted.pdf (accessed 4 November 2017); HIA, supra n 33 @ HIA 94 witness statement: <https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M3-D63-HIA-94-Docs-Rev-RO.pdf> (accessed 4 November 2017); HIA, *Module 4 - Sisters of Nazareth Belfast - Nazareth House and Nazareth Lodge* (Belfast, 2015) HIA 64 witness statement: <https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M4-D88-HIA64-Docs-RO.pdf> (accessed 4 November 2017); *Forgotten Australians* Submissions, supra n 33 @ Submissions 141, 217, 411.

³⁷ HIA, supra n 29 @ HIA 312 witness statement: https://www.hiainquiry.org/sites/hiainquiry/files/media-files/hi_312_redacted_opt.pdf (accessed 4 November 2017).

³⁸ *Forgotten Australians* Submissions, supra n 33 @ Submission 15.

staff turned a blind eye to instances of excessive punishment and sexual abuse.³⁹ At the Canadian Blue Quills residential school, Ilene Nepoose explained:

the nuns would be by the sidewalks near the buildings of the school and the playground is huge. They would just stay there, they wouldn't like look around or they wouldn't supervise properly. They just stood by the building and observed from way over there.⁴⁰

This was a pattern that was repeated in many institutions across a range of jurisdictions with victim testimony capturing the mix of helplessness and vulnerability that such an uncontrolled environment engendered. At Castle Hill, in Shropshire, for example, some boys were simultaneously victims and perpetrators, given unrestricted access to other residents as a reward for satisfying the superintendent's sexual demands.⁴¹

While the reports of recent inquiries document such abuses, they are careful to focus attention on the complicity of those who were in positions of responsibility, rather than the behavior of the residents which preoccupied earlier investigations. The role of understaffing in facilitating abuse is not disputed but it serves more as further evidence of the failure of institutions to protect the children in their care, rather than as an excuse. The CICA report, for example, condemns the unsafe environments created by the lack of supervision, arguing that while there was clear evidence that some residents entered into abusive relationships with

³⁹ TRCC, supra n 26 @ 157. *Forgotten Australians* Submissions, supra n 33 @ Submission 140, 248; *Betrayal of Trust* Stena Keys submission:

http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Stena_Keys.pdf (accessed 4 November 2017).

⁴⁰ TRCC, supra n 30 @ 172.

⁴¹ C. Brannan, J.R. Jones, and J.D. Murch, 'Lessons from a Residential Special School Enquiry: Reflections on the Castle Hill Report,' *Child Abuse Review* 2 (1993): 272.

their peers 'they resorted to such relationships in order to survive in an unsafe world.'⁴² The TRCC labels the 'residential school system's shameful inability to protect students from such victimization ... [as] one of its most significant and least-understood failures'. The impact of this failure, it argues, continues today, explaining much of the 'continuing division and distrust within Canadian Aboriginal communities.'⁴³

Witnesses before the recent inquiries are not silent about the existence of peer abuse, but most identify as victims rather than perpetrators. 'There was a lot of sexual stuff going on amongst the boys in Rubane,' a Northern Ireland care leaver reported, before noting that he 'never got involved in it ... I just kept out of it.'⁴⁴ Former residents of Australia's Retta Dixon Indigenous children's home, depict peer sexual abuse as both normative and unavoidable, accompanied by varying degrees of coercion.⁴⁵ Another Australian care leaver, Ray Flett, ascribes his vulnerability to peer abuse to earlier abuse by a staff member which, he argued, left him 'at the mercy of any sexual predator that recognised within me the need for love and companionship.'⁴⁶

⁴² CICA, supra n 25 @ 665.

⁴³ TRCC, *Honouring the Truth, Reconciling for the Future : Summary of the Final Report of the Truth and Reconciliation Commission of Canada*. (Winnipeg, 2015), 110.

⁴⁴ HIA, supra n 33 @ HIA 64 witness statement:

<https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M3-D59-HIA-64-called-docs-Rev-RO.pdf> (accessed 4 November 2017).

⁴⁵ Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA), Case Study 17: Retta Dixon Home AJA witness statement:

<http://www.childabuseroyalcommission.gov.au/case-study/48ee3c7b-a728-4777-b4e4-239d3f75a29b/case-study-17,-september-2014,-darwin> .

⁴⁶ *Forgotten Australians*, supra n 33 @ Submission 20.

Finding a Space to Speak

One of the functions of institutional abuse inquiries is to provide a way of acknowledging and remembering experiences previously hidden from the public gaze. Like the other public forms of remembrance studied by Ann Rigney, they 'are as much about shaping the future as about recollecting the past.'⁴⁷ In constructing a collective memory for the future, they tend to avoid the notion of victim/perpetrators, maintaining a 'public silence' about their existence.⁴⁸ To appear before an inquiry is to claim victim status, yet a collective memory constructed solely on this basis requires multiple layers of forgetting. New identities, Paul Connerton has argued, are built on a set of 'tacitly shared silences,' burying past memories of humiliation and pain.⁴⁹ An identity that is dependent on such shared forgettings is threatened by the existence of complex victims, yet in most instances of trauma their presence cannot be denied. Not surprisingly, descriptions of the prevalence of peer abuse far outnumber testimony from witnesses prepared to admit to having also been perpetrators. This article analyses the evidence of the small number of victim/perpetrators who did come forward in order to understand the way in which they explained or justified their behavior.⁵⁰ Such explanations or justifications are never the main focus of their testimony which always focuses on establishing their claim to victim status.

⁴⁷ Ann Rigney, 'Reconciliation and Remembering: (How) Does It Work,' *Memory Studies* 5 (2012): 251.

⁴⁸ Bakiner, supra n 8 @ 351-2. Charles B. Stone and William Hirst, '(Induced) Forgetting to Form a Collective Memory,' *Memory Studies* 7 (2014): 314.

⁴⁹ Paul Connerton, 'Seven Types of Forgetting,' *Memory Studies* 1 (2008): 63, 67.

⁵⁰ The article draws on testimonies available either in submissions or at public hearings that are on the public record. The much larger number of testimonies presented in private hearings are not accessible but do inform the conclusions drawn in the final reports.

The quotations used to support the key arguments of this paper were often little more than asides in that much larger narrative. However, in comparing such asides across a range of witnesses in different jurisdictions several common themes emerged. By identifying such themes the article seeks to expand the collective memory that underpins the emerging victim identity in order to render it more stable and complete.

Three key strategies emerge from the limited victim/perpetrator testimony that is available. Two of these strategies parallel the explanations offered for the prevalence of abuse in the institutions, while the third builds upon them in a way which gives more agency to the individuals involved. The first strategy represents the perpetrator's behavior as normative in environments which were inherently abusive.⁵¹ However, it focuses on the structure of the institution rather than the individual characteristics of the residents as the central cause. Hector Davis, a contented former resident of Melbourne's Burwood Boys' Home does not identify as a victim. Rather, he argues, 'harsh physical treatment and minor sexual problems between the boys' were a part of institutional life which have only later come to be understood as abusive.⁵² More commonly, witnesses accept the later redefinition but argue that they did not see the behavior as abusive at the time. 'It is probably a bit embarrassing,' a CICA witness began, but to be honest with you I was actually involved in that myself. It was just sort of playing around basically it was very common in Artane ... 99% of the time it would be a case of just two boys messing about.⁵³

⁵¹ HIA, supra n 33 @ HIA 56 witness statement:

<https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M3-D67-HIA56-Called-Docs-Rev-RO.pdf> (accessed 4 November 2017).

⁵² *Forgotten Australians*, supra n 33 @ Submission 133.

⁵³ CICA, supra n 25 @ 188.

Most witnesses want to position their participation within that 99 per cent. 'I didn't go around and attack and ambush kids or abuse them or rape them,' another Irish care leaver testified, 'but what I am saying is I did have ... [a] sort of a relationship ... there was one or two that you would play ball or games or roll around in the hay, you know, just things like that.'⁵⁴ In a similar vein, a witness before the HIA expressed his resentment at being punished for behavior which he argued was simply boys 'carrying on.'⁵⁵ 'Carrying on' is presented as a normal part of growing up, a process through which adolescents tried to understand what was happening to their bodies.⁵⁶ It was only abuse, child migrant John Hennesey argued, if there was violence involved. More commonly witnesses describe such sexual activity as a source of comfort and protection in an otherwise harsh environment.⁵⁷

⁵⁴ Ibid., 358.

⁵⁵ HIA, *Module 1, Sisters of Nazareth, Derry/Londonderry* (Belfast, 2017), HIA 130 witness statement: <https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M1-D13-HIA130-RO.pdf> (accessed 4 November 2017). HIA13 Witness statement: <https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M1-Day-9-HIA-13-Called-docs-RO.pdf> (accessed 4 November 2017).

⁵⁶ HIA, supra n 33 @ HIA 21 witness statement: <https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M3-D70-HIA21-Called-docs-Rev-RO.pdf> (accessed 4 November 4, 2017); RCIRCSA, supra n 45 @ Stagg witness statement: <http://www.childabuseroyalcommission.gov.au/case-study/48ee3c7b-a728-4777-b4e4-239d3f75a29b/case-study-17,-september-2014,-darwin> (accessed 4 November 2017).

⁵⁷ RCIRCSA Case Study 11 Congregation of the Christian Brothers in Western Australia, John Hennesey Witness statement: <http://www.childabuseroyalcommission.gov.au/case-study/e7ba58da-609c-4854-aa74-c8992ec75d3c/case-study-11,-april-2014,-perth> (accessed 4 November 2017).

However, in the face of current discourses around sexual abuse, such definitions have become more difficult for victim/perpetrators to sustain. Describing the ‘hag’ system that operated at Daingean home, an Irish care leaver initially invoked the term ‘pal’ but then admitted that the relationships that developed could now be seen as sexual abuse.⁵⁸ Australian Peter Brownbill sidesteps this dilemma by refusing to pass judgment on his earlier self, flatly confessing to ‘having sex with boys five or six year old, and much older boys with pubic hair ... at night in the dormitories.’⁵⁹ Another former Daingean resident has come to understand his behavior as an addictive ‘disease ... once you start getting the feel for it it is like wanting sugar.’⁶⁰ Depicting his younger self as similarly addicted, Australian care leaver, John Lloyd, positions himself as more active, overcoming his initial fear of exposure and ridicule, in order to seek out sexual partners in an environment in which ‘sexual activity ... [was] an irresistible feature of life.’⁶¹

The difficulty which such witnesses have in placing themselves on one side or the other of the victim/perpetrator line points to far more than the problems implicit in judging past behavior in the light of the present. By positioning their behavior as a normative response to an abusive environment they seek to sidestep the problem. The much larger proportion of witnesses prepared to admit to being victims rather than perpetrators of what they now see as peer abuse would support this conclusion, with the few who do come forward emerging as the truth speakers prepared to confront an unpalatable past.

⁵⁸ CICA, supra n 25 @ 663. The ‘hag’ system involved a relationship in which an older resident provided protection for a younger resident in return for services.

⁵⁹ *Forgotten Australians* Submissions, supra n 33 @ Submission 321.

⁶⁰ CICA, supra n 26 @ 178.

⁶¹ *Forgotten Australians* Submissions, supra n 33 @ Submission 210.

The complicity of staff in condoning abuse offers a second means by which those who confess to having been perpetrators seek to regain their status as victims. Describing his triumph over another resident in a fight at Queensland's notorious Westbrook boys home, an anonymous witness before Australia's Royal Commission writes 'I snapped and broke a mop handle over his face,' but quickly qualifies his description by adding 'the officers condoned this action.'⁶² Constrained by a system in which children were used to punish their peers, such victim/perpetrators argue that they had no choice but to do so. Many now couple such explanations with an expression of regret. Having dutifully followed the nuns' instructions to slap and bully the younger girls in her charge during her time in care, a Northern Ireland woman confesses 'looking back now, I know that's wrong.'⁶³ Describing the physical punishments he was forced to administer to younger residents, another Northern Ireland witness explains 'you buy into it, I did anyway.' However, he places the blame on a system that 'brutalized' children 'making monsters out of us.'⁶⁴ 'I always felt, like, inside that I hated, I hated all of that,' wrote Canadian residential school survivor, Victoria McIntosh. 'I hated all of that. I never wanted to intentionally hurt anybody.'⁶⁵ Survivors also cite instances in which staff were complicit in

⁶² RCIRCSA, *Case Study 5 Salvation Army Eastern Division*, EG witness statement:

<http://www.childabuseroyalcommission.gov.au/case-study/a0bd6592-0036-42eb-9c33-62c7ad8312b1/case-study-5,-january-2014,-sydney> (accessed 4 November 2017).

⁶³ HIA, *supra* n 36 @ HIA 95 witness statement: available at <https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M4-D97-HIA95-Docs-Rev-RO.pdf> (accessed 4 November 4, 2017).

⁶⁴ HIA, *supra* n 55 @ HIA 130 witness statement: <https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M1-D13-HIA130-RO.pdf> (accessed 4 November 2017). See also TRCC, *supra* n 30 @ 169.

⁶⁵ *Ibid.*, 166-7.

instances of peer sexual abuse, leaving them with no choice but to comply. Australian care leaver Michele King, explained that she felt compelled to masturbate some of the younger girls when told to do so. 'If I had not I would have been bashed.'⁶⁶ One of two brothers forced to have oral sex with each other for the gratification of their adult abuser testified before the HIA about the 'stigma and guilt' that has stayed with them ever since.⁶⁷ 'Those that abuse you can walk away from it but you can't walk away from the memories of what they made you do,' the other brother declared.⁶⁸

But not everyone regrets their action. Boasting of the fighting abilities which saw him through a long period of institutionalization, a witness before the Australian Royal Commission explained 'I was a good fighter for my age, so I used to have to pick on other kids ... I didn't want to beat them, I didn't want to hurt them, but I had to, to win'.⁶⁹ Survival is the third theme that runs through the testimonies of complex victims. In many institutional environments you had to fight or you were bullied.⁷⁰ Fighting on the orders of the officers, many saw no alternative but to

⁶⁶ *Forgotten Australians* Submissions, supra n 33 @ Submission 273 FA.

⁶⁷ HIA, supra n 33 @ HIA 218 witness statement:

<https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M3-D65-HIA-218-docs-Rev-RO.pdf>

(accessed 4 November 2017).

⁶⁸ Ibid., HIA 219 witness statement: [https://www.hiainquiry.org/sites/hiainquiry/files/media-](https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M3-D65-HIA-219-docs-Rev-RO.pdf)

[files/M3-D65-HIA-219-docs-Rev-RO.pdf](https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M3-D65-HIA-219-docs-Rev-RO.pdf) (accessed 4 November 2017).

⁶⁹ RCIRCSA, supra n 62 @ EE witness statement:

[http://www.childabuseroyalcommission.gov.au/case-study/a0bd6592-0036-42eb-9c33-](http://www.childabuseroyalcommission.gov.au/case-study/a0bd6592-0036-42eb-9c33-62c7ad8312b1/case-study-5,-january-2014,-sydney)

[62c7ad8312b1/case-study-5,-january-2014,-sydney](http://www.childabuseroyalcommission.gov.au/case-study/a0bd6592-0036-42eb-9c33-62c7ad8312b1/case-study-5,-january-2014,-sydney) (accessed 4 November 2017).

⁷⁰ HIA, supra n 36 @ HIA 64 witness statement:

<https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M4-D88-HIA64-Docs-RO.pdf>

(accessed 4 November 2017); HIA, supra n 33 @ HIA 259 witness statement:

beat or be beaten.⁷¹ At Australia's Mount Penang reformatory, those who were deemed not to have tried hard enough to pursue absconders faced transfer to an even more extreme institution.⁷² In several jurisdictions witnesses report that those who refused to fight were subject to further punishment, either at the hands of the officers or of the gang leaders.⁷³

It was dog eat dog ... you had to fight, scratch, you had to do everything for survival. There was no love or affection or caring from anyone, you know. And there was no one to talk to, you just had to form your own way of survival.⁷⁴

To speak out only brought further abuse.⁷⁵ 'I learned to fight my way out of everything that I can,' wrote Canadian survivor Leona Bird. 'I didn't care, as long as I fought back. That's how hatred was building up so big there inside my whole body. I couldn't do nothing.'⁷⁶

Some witnesses use the survival justification to reconstruct their behavior as resistance, although this is clearly far easier to argue in cases of physical as against sexual abuse. Angus

<https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M3-D65-HIA-259-docs-Rev-RO.pdf>

(accessed 4 November); Betrayal of Trust inquiry, Submission 11,:

http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Name_Withheld_11.pdf (accessed 4 November 2017).

⁷¹ RCIRCSA, supra n 62 @ FP witness statement:

<http://www.childabuseroyalcommission.gov.au/case-study/a0bd6592-0036-42eb-9c33-62c7ad8312b1/case-study-5,-january-2014,-sydney> (accessed 4 November 2017).

⁷² Forgotten Australians Submissions, supra n 33 @ Submission 321 (accessed 4 November 2017).

⁷³ Ibid., Submission 471; TRCC, supra n 30 @ 165-6.

⁷⁴ CICA, supra n 25 @ 391.

⁷⁵ Forgotten Australians Submissions, supra n 33 @ Submission 198.

⁷⁶ TRCC, supra n 30 @ 167.

Haviyak carries with pride the scar which resulted from his determination to fight his bullies.⁷⁷ By fighting back, some claim, they were able to ensure their own safety or that of their group.⁷⁸ Canadian Louise Large positioned herself as ‘the leader of the pack’ at her residential school. She readily confesses to being willing to ‘beat anybody’ in defence of her gang, ensuring that they were left alone.⁷⁹ A Northern Ireland survivor positioned his violence as a means of compelling ‘the bullies’ to leave the younger children alone.⁸⁰ Even those who identify as bullies use this explanation to justify their actions, describing themselves as protecting residents from abusers rather than being abusers themselves.⁸¹ Through this process the perpetrator label can be replaced by that of the hero, repositioning the individual as a savior rather than a threat to fellow residents. Whether the behavior was seen by other residents in that way at the time is a question not asked in current inquiries.

Given the focus of recent inquiries on survivor testimonies, neither the hearings nor the final reports contest such justifications. Even within the legalistic context of a Royal Commission the emphasis has been on reassuring victim/survivors that they will be believed and, at least in

⁷⁷ Ibid., 170.

⁷⁸ *Forgotten Australians* Submissions, supra n 33 @ Submission 473; TRCC, supra n 30 @ 167. RCIRCSA, *Case Study 7 Parramatta Girls Home*, Wendy Patton witness statement: <http://www.childabuseroyalcommission.gov.au/case-study/f5e0f634-5670-4abf-bdf6-c7d8a58d677f/case-study-7,-february-2014,-sydney> (accessed 4 November 2017).

⁷⁹ TRCC, supra n 30 @ 167.

⁸⁰ HIA, supra n 33 @ 244 witness statement: <https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M3-D59-HIA-244-called-docs-Rev-RO.pdf> (accessed 4 November 2017).

⁸¹ Ibid., HIA 25 witness statement: <https://www.hiainquiry.org/sites/hiainquiry/files/media-files/M3-D66-HIA-25-docs-Rev-RO.pdf> (accessed 4 November 2017).

the Australian example, the practice has generally been not to subject them to cross-examination. In its issues paper drawing on the contested research which highlighted child-on-child abuse, the Royal Commission acknowledges the experiences recounted in both private and public hearings of what it chooses to describe as ‘sexually harmful behaviors’ but focuses firmly on the present and the future. Yet, while the key explanations the issues paper identifies are structural, much of the discussion that follows focuses on the individual, locating the causes of such behaviors in the past experiences of the children, and seeking to identify therapeutic interventions that could eliminate the risk that they pose to other children.⁸² Analysis of the structural factors is collapsed in this report into a broader discussion of the risks faced from staff and external abusers in which the children are not considered to be complicit. While the issues paper acknowledges that the problem of peer abuse is not new, its relevance to the discussions of historical abuse is studiously avoided.

Implications for reparation processes

As the focus of survivor activism moves from investigation to compensation, the silence surrounding the complex victim has the potential to become damaging. The implication that the ‘sexually harmful behaviors’ apparent in the current context could also have been present in the past makes it inevitable that the claims of victim/perpetrators to victim status will again be open to question. However, the consonance, identified in this paper, between explanations as to the structural reasons for endemic abuse and the self-constructions of the small number of witnesses who talk about being abusers themselves has the potential to provide the means by which the definition of the victim can be expanded to include those whose situation is more complex. In effect they are constructing their perpetration as a result of their victimization,

⁸² RCIRCSA, *Institutional Responses to Child Sexual Abuse in out-of-Home Care*, Consultation Paper (Sydney, 2015), 37-9.

repositioning themselves within the category of victim even when they see their perpetrator activities as giving them some sense of agency in an otherwise impossible situation

The reports of historical abuse, and the publicity which surrounds them, quite rightly focus on the failings of those who were charged with protecting the children in their care. However, as the lessons from other fields of transitional justice make clear, this consensus can prove difficult to maintain when the discussion moves on from disclosing the harms to deciding on reparations.⁸³ In the face of scarce resources, and rationed offerings, standards of proof are higher and more legalistic, demanding that applicants prove rather than simply assert their innocence.⁸⁴ Care leaver support groups which, in the past, played such a vital role in constructing the collective memory of abuse that inquiries have subsequently validated are at risk of splintering around competing claims to victim status unless that collective memory can be expanded to both acknowledge and include the more complex victims. While several such groups have reacted angrily to the Australian Government's decision to exclude anyone convicted of sexual abuse, drug, fraud or homicide offences from its proposed redress scheme, the assumption underlying their objection is that such offences were the result of their care experiences.⁸⁵ To date they have been silent on those whose 'offending' began during their time

⁸³ Luke Moffett, 'Navigating Complex Identities of Victim-Perpetrators in Reparation

Mechanisms,' *Queen's University Belfast Research Paper* (2014):

<http://ecpr.eu/Filestore/PaperProposal/14d84c59-1767-467b-814c-0d57e7404655.pdf>

(accessed 4 November 2017).

⁸⁴ Johanna Sköld and Åsa Jensen, 'Truth-Seeking in Oral Testimonies and Archives' in Sköld and Swain, *supra* n.4 @ 169.

⁸⁵ 'Child Sex Abuse Redress Scheme to Cap Payments at \$150,000 and Exclude Some Criminals', ABC News, 26 October 2017: <http://www.abc.net.au/news/2017-10-26/sex->

in care. During the recent Australian Senate Inquiry into the proposed redress scheme, almost all of the submissions supported the survivor groups' condemnation of the plan to render offenders ineligible.⁸⁶ However, almost all of this opposition was grounded in the assumption that subsequent offending could be related to the abuse of victims during their time in care, with only two submissions acknowledging that some of these victims had been perpetrators as well.⁸⁷

This silence would suggest that despite the solidarity amongst survivor groups, the hierarchy of victimhood remains strong amongst many who are sympathetic to their cause. Bouris's challenge to advocates of transitional justice to look beyond the victim/perpetrator dichotomy, and seek to accommodate the complex victim in redress schemes continues to be sidestepped. Rather the persistence of hierarchies in many contexts actively thwarts attempts to bring about reconciliation, perpetuating the divisions that the process was designed to overcome and marginalizing those whose experiences fell short of the ideal.⁸⁸ The exclusion of people sentenced to crimes of five or more years from the new Australian redress scheme

[offenders-to-be-excluded-from-child-abuse-redress-scheme/9087256](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Abuse_RedressScheme/9087256) (accessed 4 November 2017).

⁸⁶ Australian Senate Community Affairs Legislation Committee, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions]* (Canberra, 2018)

⁸⁷ Submissions 25 and 36:

[https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Abuse RedressScheme/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Abuse_RedressScheme/Submissions)

⁸⁸ Sarah Jankowitz, 'Sociopolitical implications of exclusive, intergroup perceptions of victims in societies emerging from conflict,' *Peacebuilding*, 5:3 (2017): 303.

would suggest that reparation for some complex victims remains politically unpalatable.⁸⁹

Perhaps this is because, as Cheryl Lawther has recently argued, denying the complexity of the victim landscape deflects attention from the structural sources of conflict, violence and abuse.⁹⁰

As this paper has argued, for survivors of historical institutional abuse the systems that facilitated the abuse also created the situation in which many of the abused became abusers, a chain of causation which many of the complex victims who have fronted recent inquiries use to explain their past behavior. By breaking the public silence about the existence of victim/perpetrators in this space, and listening to the ways in which they reconcile their past behavior with a contemporary victim identity it aims to defuse a potential danger on ongoing debates around reparation. Whether it be in the past, where this complexity has been disguised by the focus on victim narratives, or the present where it continues to be a very live issue in discussions of out-of-home care, responsibility lies with the supervisory authorities and should never be deflected onto the children in their care. An acceptance of this principle both by those designing reparation schemes, and the survivor groups that support those who apply to them would prevent such schemes from further harming those to whom justice remains to be done.

⁸⁹ Australian Government, Department of Social Services, *National Redress Scheme for People who have Experienced Institutional Child Sexual Abuse*, <https://www.dss.gov.au/national-redress-scheme-for-people-who-have-experienced-institutional-child-sexual-abuse> (accessed 28 June 2018).

⁹⁰ Cheryl Lawther, "'The Cast of the Past': Truth Commissions and the Making and Marginalization of Identity,' *Ethnopolitics*, 17:2 (2018): 125-6.

